

# EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 10-141 (CM) (KF)

MARVEL WORLDWIDE, INC.,  
MARVEL CHARACTERS, INC.,  
and MVL RIGHTS, LLC.,  
Plaintiffs,  
vs.  
LISA R. KIRBY, BARBARA J.  
KIRBY, NEAL L. KIRBY and  
SUSAN N. KIRBY,  
Defendants.

VOLUME I

## VIDEOTAPED DEPOSITION OF

ROY THOMAS

October 26, 2010  
10:06 a.m.

Holiday Inn Express  
Orangeburg, South Carolina

ANNIE O'HARA, CCR-B-2340, SC Notary

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2

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19 Michael Arrison  
20  
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22  
23  
24  
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Thomas

2 from time to time new villains or new supporting  
3 characters.

4 Q. Did artists ever come up with ideas for  
5 new characters?

6 A. Yes.

7 Q. Was it your understanding that part of the  
8 writer's assignment was to introduce new characters  
9 into a comic book series?

10 A. Yes.

11 Q. Was it your understanding that part of the  
12 artist's assignment was to introduce new characters  
13 into a comic book series?

14 A. Yes, anything that would be -- would  
15 further the plot.

16 Q. How -- how did the artists know what to  
17 draw?

18 MR. TOBEROFF: Leading; vague.

Thomas

artist what the story was. Then it was his job to turn that into pictures.

BY MS. KLEINICK:

Q. When you arrived at Marvel in 1965, did you ever see Stan interacting with other writers or artists?

A. Yes.

Q. Did you ever see Stan give a plot or describe a plot to an artist?

A. Yes.

Q. To your knowledge did artists start working on pages before discussing the plot or synopsis with Stan or the writer?

A. No.

Q. Who decided which writer and artist would work on a particular comic book or issue?

A. Stan.

Q. Were the assignments to writers given orally or in writing?

A. Generally, orally.

Q. Are you aware of how assignments were given to artists?

A. Well, orally. Sometimes Stan would be talking to the person directly. Just as often or

Thomas

more often Sol Brodski as the production manager would later report -- would call that person up and tell them. But, of course, they were always understood to be speaking for Stan, and they were.

6 Q. And just so we're clear, I just want you  
7 understand, when I'm saying "assignment," I mean the  
8 assignment to do a particular issue.

9 A. Uh-huh.

10 Q. Is that how you understood my question?

11 A. Yes.

12 Q. Are you aware of any instance where a  
13 writer began to work on a new series or title or  
14 comic book without first being assigned to it by  
15 Stan?

16           A.     People might come up with an idea for a  
17     new series at some stage.  Not -- not in the -- this  
18     -- this wouldn't have happened before at least  
19     about, you know, the early '70s or so.  Once or  
20     twice -- generally speaking, the ideas were  
21     generated, you know, by someone in the office, by  
22     Stan or sometimes later by me; but we were open to  
23     somebody else coming in, but it wasn't anything we  
24     were going around looking for or asking for.

25 O. In the 1960s -- from 1965 to 1970, are you

1

2 aware of any instance where a writer came in and  
3 actually started working on a new series before Stan  
4 said: Go ahead and write the series?

5 A. No.

6 Q. Are you aware of any instances where an  
7 artist began work on a comic book issue before  
8 getting the assignment to do the issue from Stan?

9 A. No.

10 Q. Did writers or artists have any authority  
11 to assign themselves to do an issue without prior  
12 approval from Stan or Sol?

13 A. No. No.

14 Q. Are you aware of any instances where an  
15 artist submitted artwork for an issue that he hadn't  
16 been assigned to, like on spec?

17 A. Only new artists who were turning in  
18 samples, not an established artist, not one that was  
19 already -- was already doing work for Marvel.

20 Q. To your knowledge during this time period,  
21 1965 to 1972, did Marvel ever buy any work created  
22 on spec by freelance artists?

23 A. No. No.

24 Q. Were writers or artists ever during this  
25 time period taken off a comic book issue for an

1 Thomas

2 ongoing series?

3 A. Yes.

4 Q. Whose decision was that?

5 A. Stan.

6 Q. And who had the final say on which comic  
7 book stories each artist would be assigned to?

8 A. Stan Lee. He could have been technically  
9 overruled by publisher Martin Goodman, if Martin  
10 Goodman found there was some artist or someone he  
11 really didn't like or he did like or something. But  
12 as a practical matter, Goodman did not concern  
13 himself with anything like that, except at sometimes  
14 there were certain artists whose covers he didn't  
15 think were clear enough.

16 He didn't like if Stan assigned that  
17 person to do a cover. Occasionally, they had a  
18 little problem about that. And, of course,  
19 Goodman's word was final. But as a matter of  
20 practical fact, 90-plus percent of the time it was  
21 Stan's decision.

22 Q. Was there a set production schedule for  
23 the Marvel comic titles back in the 1960s to early  
24 '70s?

25 A. Yes.

Thomas

Q. When the writers were given an assignment, were they also given a deadline to submit the -- let's start with the artist. When the artists were given an assignment, were they given a deadline by which they had to submit the finished pencils?

A. Yes. Either the exact date or as fast as you could do it. But, yes. They were doing a deadline.

Q. And then when the artwork went to the writers, were the writers also given deadlines by which they had to submit the scripts?

Yes.

## Q. The dialogue?

A. Yes.

Q. Who set those deadlines?

A. They were worked out by the production manager.

Q. That was Sol Brodski?

A. Yes. Through '70 or so when he quit.

After that by John Berpoorten.

Q. And who ultimately decided which books were published and which books weren't published?

A. Well, during that period and through about sometime in about '72, it was generally Martin

Thomas

2 Goodman. For a short period of time in the early  
3 '70s it was his son Chip Goodman who had -- who was  
4 -- had become publisher.

5 Q. Was the assignment process the same for  
6 freelancers as it was for staff writers and artists?

7 MR. TOBEROFF: Vague.

8                   THE WITNESS: I was going ask, just to --  
9                   if you could clarify that, just I make sure --  
10                  I'm sure I understand it.

11 BY MS. KLEINICK:

12 Q. Did staff artists get their assignments  
13 the same way, from Stan or from Sol Brodski?

14 A. Oh, yes.

15 MR. TOBEROFF: Compound.

16 BY MS. KLEINTICK.

17 Q. How did staff artists get their  
18 assignments?

19           A.     They were told either directly by Stan or  
20     quite often by Sol Brodski in his capacity to do  
21     them.  Of course, if Sol assigned an artist, it was  
22     because Stan wanted that artist assigned to it.  
23     They would confer on it and say:  Is this artist  
24     available.  Things of this sort.

25 Sol was the practical one who had to tell

Thomas

2           A.     Yes.  In the, you know, very earliest days  
3     I wouldn't have done that; but gradually Stan let me  
4     know as time went on that, you know, that I should  
5     -- that I could take, you know, some of this, you  
6     know, burden off.  And so it was a practical fact if  
7     I was sure that it was something that Stan would  
8     want or at least I thought that Stan would want --  
9     but I would tend for much of that time, most of that  
10    time, until I was at least editor-in-chief to try to  
11    check it with him if I could.

12 Q. Did -- did Stan ever -- if Stan decided.

13                   Was it your understanding that Marvel had  
14                   the ability to use characters that were introduced  
15                   into its story lines by a writer and artist into a  
16                   different comic book story line being drawn and  
17                   written by a different artist and writer?

18 MR. TOBEROFF: Objection; compound;  
19 leading; vague.

20 BY MS. KLEINICK:

21 Q. You can answer.

22 MR. TOBEROFF: Assumes facts.

23 THE WITNESS: If by the ability you mean  
24 the right to do it, and the -- yes.

25 BY MS. KLEINICK:

Thomas

2 Q. Was that done -- was that done in the '60s  
3 after you got there, where characters that had been  
4 introduced into one comic book line title were used  
5 in other comic book lines or titles?

6 MR. TOBEROFF: Same objections.

7 THE WITNESS: Yes.

8 BY MS. KLEINICK:

9           Q.        You testified that the writer was  
10      responsible for writing the dialogue in the comic  
11      books; is that right?

12 A. Yes.

13 Q. Did artists ever suggest or submit  
14 dialogue with their drawings?

15 A. Yes, the artists wrote what we call margin  
16 notes in pencil that was supposed to sort of tell  
17 Stan what they were thinking when they did the  
18 story, since they were working on his story. And in  
19 some of those notes, besides saying: This blows up  
20 or something, sometimes the artist wrote either what  
21 we call direct or indirect, you know, quotations.  
22 Either suggested exact dialogue or approximate  
23 dialogue.

24 Q. Who had the final say on what the dialogue  
25 would be for the story?

Thomas

2 A. Well, the writer, subject to Stan.

3 Q. If a character that one -- that a writer  
4 and artist first introduced into a Marvel story line  
5 was going to be used in a different story line that  
6 was being written by a different writer and artist,  
7 did anyone have to go back and consult with the  
8 original writer and artist to use that character?

9 MR. TOBEROFF: Incomplete hypothetical.

10 THE WITNESS: The person who made all  
11 those decisions was Stan. You didn't have to  
12 consult with the other person. As a matter of,  
13 you know, courtesy or information, you might do  
14 it; but it was not required.

15 BY MS. KLEINICK.

16 Q. Who decided which artist would do a cover  
17 for a particular issue?

18 A. Stan.

19 Q. Were the covers reviewed by anyone before  
20 they were published?

21 A. Well, they were reviewed by Stan, because  
22 after they were drawn he wrote the cover copy and  
23 then looked it over again after -- after the cover  
24 was inked, either by the same artist or a different  
25 one.

Thomas

Then it was -- then they were reviewed -- they were all reviewed eventually by Martin Goodman as publisher, and very briefly as I said by Chip Goodman, and, of course, from '72 to '74 by Stan himself as publisher.

Q. From the time you arrived at Marvel from '65 to '72 were changes ever made to the covers that had been submitted by artists?

A. Yes.

Q. Who would make those changes?

A. That depended upon circumstances. If the original artist was there or if there was time to either have him come in or to mail it or send it to him, he might be asked to make the changes. Sometimes, either if it was a minor change or if the deadline needs were great or for any other reason, Stan -- especially in consulting with the production manager who had the responsibility with the schedule -- would decide, you know, that it should be done by a staff artist or perhaps a visiting freelance artist who just came in. It really depended on what the change was and what the time was.

Q. And if an artist's work -- if an artist's work required that changes be made, would the artist

Thomas

2 have been paid for the original work that they  
3 submitted?

MR. TOBEROFF: Incomplete hypothetical.

THE WITNESS: Yes, the artist would have paid.

7 BY MS. KLEINICK:

8 Q. Between '65 and at least '72 you were paid  
9 both a salary and for your editorial work and a page  
10 rate for your the freelance writing that you did?

A. Right.

Q. How often were you paid?

13           A.        That's something I am a little vague  
14        about. I know that the salary checks were more  
15        frequent than the freelance checks, but I'm -- they  
16        both came on Fridays but not always at the same  
17        time. I'm just not certain if we were paid -- I --  
18        I feel we were probably paid salary checks every  
19        week, and maybe the freelance was every other week;  
20        but I'm not 100 percent sure of that. It all kind  
21        of fades together after a while.

22 Q. Who decided what the page rates for  
23 freelance writers and artists would be?

24           A.       Well, Stan had the individual  
25 responsibility; but, of course, it was subject to

Thomas

Q. Do you recall whether or not there was any legend or stamp on the checks that were issued by Marvel to you for your freelance work at the time you first started working for Marvel in the 1960s?

MR. TOBEROFF: Leading; assumes facts.

THE WITNESS: Yes, there were stamped legends or paragraphs on the back of the checks. I cannot remember offhand if they were on both the freelance and the staff checks. I know they were on the freelance checks, but I don't recall whether they were on the others. Because I never -- you know, after a while you just stop paying attention to those. You just sign the check and that was it.

BY MS. KLEINTICK:

Q. Do you recall whether the first freelance checks you received from Marvel had a legend or stamp on the check?

A. I know that all the ones I remember did. And I remember back pretty early, but, you know, I couldn't swear the very first one did; but it, you know -- you know, it seemed like it was an ongoing policy.

Do you recall what the legend said?

Thomas

2 A. Only in a general sense. I, of course,  
3 read it; but, basically, it was saying that the  
4 company had -- owned all the -- the copyrights and  
5 all of the rights to the material for which I was  
6 being -- material or work for which I was being  
7 paid.

8 Q. And was that the same type of language  
9 that you recall seeing on all of the checks that had  
10 the legends on them?

11 A. Whenever I read it -- the exact wording  
12 may have changed slightly from time, but it was  
13 always, you know, words to that effect.

14 Q. Do you know whether the checks that were  
15 given to other writers or freelance artists also had  
16 a legend or a stamp on them?

17 A. I know that they did. I didn't see  
18 everyone's checks, of course; but -- and it was my  
19 understanding that they did.

20 Q. Did you ever discuss the check legends  
21 with any of the other freelance writers or artists?

22           A.       I don't recall specific, you know,  
23 conversations in detail.  But I know that from time  
24 to time we would discuss them, because at first I  
25 was a little puzzled seeing all this on here.  You

Thomas

2 have been about two weeks or so.

3 Q. You testified that there was a script that  
4 you wrote, I think it was on an Ironman script that  
5 Stan didn't like and revised significantly?

6 A. Yes.

7 Q. Is that right?

8 A. Yes. He rewrote about 50 percent of it.

9 Q. Were you paid for the pages that you  
10 submitted for that script?

11           A.        That was one of the ones that I was doing  
12        as part of the staff writer thing during those first  
13        few weeks, so I wasn't paid separately. It was  
14        counted as part of my staff writer salary, so I was  
15        paid in that sense, for that and the Dr. Strange.  
16        But I think -- I think those. I know Ironman was  
17        and I think Dr. Strange's were all part of the  
18        staff's salary.

19 Q. Were there any materials that you  
20 submitted in your freelance capacity that were  
21 modified by Stan?

22 A. Yes.

23 Q. Were you still paid for the pages that you  
24 submitted?

25 A. Yes.

Thomas

2 were -- artists submitted their finished pencils to  
3 either Stan or to Sol for approval; is that right?

4 MR. TOBEROFF: Misstates testimony.

8 BY MS. KLEINICK:

9 Q. Did -- did artwork that was submitted by  
10 freelance artists from the time that you got there  
11 in 1965 through the early '70s need to be approved  
12 by Stan or Sol before it got published?

13           A.       Yes, it had to be approved by Stan. Sol  
14        didn't really have the authority to approve anything  
15        unless he felt that Stan -- he was always acting on  
16        Stan's authority, but he wouldn't have approved  
17        anything on his own authority.

18 Q. Was Jack Kirby required during this time  
19 period to submit his artwork to Stan for approval?

20 MR. TOBEROFF: Leading.

21 THE WITNESS: Yes. It was turned in to  
22 Stan for -- for him as editor, to look at, to do  
23 whatever he wanted to do.

24 BY MS. KLEINICK:

25 Q. Did Stan or any other editor ever make

Thomas

2 changes to the artwork that Kirby submitted for  
3 publication?

4 A. Yes.

5 Q. Did Stan or any other editor ever ask  
6 Kirby to redo anything that he had submitted to your  
7 knowledge?

8 MR. TOBEROFF: Leading.

12 BY MS. KLEINICK:

13 Q. In the instances where changes -- where  
14 Stan determined that changes should be made to the  
15 artwork that Kirby had submitted for publication by  
16 Marvel, would Stan typically have Kirby make the  
17 changes or --

18 A. Are you finished with the question?

19 Q. Would Stan typically have Kirby make the  
20 changes?

21 MR. TOBEROFF: Assumes facts; leading;  
22 compound.

Thomas

2 Jack Kirby submitted on any of the stories that he  
3 was working on?

4 A. On many of them.

5 Q. Do you ever recall seeing any notes or  
6 suggested dialogue that Mr. Kirby included on the  
7 artwork pages he turned in?

8           A.       Yes.  Pretty invariably, some sort of  
9       notes -- whether some of it suggested dialogue, some  
10      of it was other comments or plot things.

11 Q. And do you know on the issues where Stan  
12 was the writer whether he -- what he would do with  
13 the notes and dialogue that Kirby put in the  
14 margins?

15           A.     He would utilize them to make sure that he  
16     understood fully what -- what was going on based on  
17     Jack's expansion of the plot. And then he would --  
18     as far as the dialogue, he would utilize little  
19     snippets of it, or he would make up his own, as far  
20     as I could tell when I was examining it and when I  
21     was proofreading and marks were often still there.  
22     He used very little of the exact wording.

23 Q. I would like to mark as Thomas Exhibit --  
24 I guess we are up to 15 -- a document bearing  
25 production number Marvel 15988 through 16125.

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1 C E R T I F I C A T E  
2

3 STATE OF GEORGIA:

4 COUNTY OF FULTON:

5  
6 I hereby certify that the foregoing  
7 transcript was taken down, as stated in the  
8 caption, and the questions and answers thereto  
9 were reduced to typewriting under my direction;  
10 that the foregoing pages 1 through 196 represent  
11 a true, complete, and correct transcript of the  
12 evidence given upon said hearing, and I further  
13 certify that I am not of kin or counsel to the  
14 parties in the case; am not in the regular  
15 employ of counsel for any of said parties; nor  
16 am I in any way interested in the result of said  
17 case.

18 This, the 8th day of November, 2010.

19  
20 21 ANNIE O'HARA, CCR-B-2340  
22  
23  
24  
25

## ERRATA SHEET

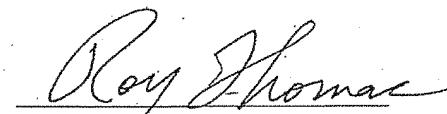
Transcript of Roy Thomas  
October 13, 2010 and October 14, 2010

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
10	16	various	varies	Transcription error
25	13 and 14 (and in passim throughout transcript)	Brodske	Brodsky	Spelling error
30	8	I remember calling myself	I don't remember calling myself	Transcription error
33	19	Berpoorten	Verpoorten	Spelling error
35	14	increasing	increasingly	Clarification
43	5	newspaper script that	newspaper strip that	Transcription error
45	8	Milly	Millie	Spelling error
45	10	Heady	Hedy	Spelling error
46	17	Ironman	Iron Man	Spelling error
46	18	we wrote	he wrote	Transcription error
50	15	"dialogue for"	"dialogue" for	Transcription error
76	20	comics code	Comics Code	Transcription error
87	7-8	Comics Book	Comix Book	Spelling error
88	22	Dennis	Denis	Spelling error
92	6	Magazine fancy	magazine – "fanzine"	Transcription error

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
93	17-18	I'd like to direct your attention to page 9 of the article, the window that starts off "Synopsis for Fantastic Four No. 8." And there's a newspaper Puppet Master. Do you see that?	I'd like to direct your attention to page 9 of the article, the window that starts off "Synopsis for Fantastic Four No. 8. Prisoners of Puppet Master." Do you see that?	Transcription error
95	13	Evenier	Evanier	Spelling error
109	17	surfer	Surfer	Spelling error
119	24	Coleman	Colan	Transcription error
138	17-22	Oh Romita. I had some communications with John Romita. I don't think I did, unless I would have mentioned it in passing sometime in an e-mail, but I don't recall doing that. We have very little communication and so forth. There was certainly nothing substantive.	I have not had any communications with John Romita about this case.	Clarification
152	21	gone	gotten	Transcription error
158	9	you say that at a minimum would be a co-writer and	you say that at a minimum you would be a co-writer and	Transcription error
179	8-9	Carmen Empitimo	Carmine Infantino	Spelling error
191	5	regretted	regret	Transcription error

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
195	3	Jerry	Gerry	Spelling error
196	15	Jerry	Gerry	Spelling error
218	17	originated	originate	Transcription error
224	18	including the two I dialogue, did not have any	including the two I dialogued, I did not have any	Transcription error
232	3	don't	didn't	Transcription error
233	18	balloon	Balloons	Transcription error
237	14-16	So in that case, as far as I know, Jack did all the plotting and was credited, you know, and we all knew it.	So in that case, as far as I know, Jack did the plotting and, though he wasn't specifically credited with the plot, we knew he had done it.	Clarification
238	3	Well, -- yes.	Well, -- no. It was after Jack left Marvel in 1970.	Clarification
239	19	House Roy	Houseroy	Spelling error
240	16	do that	get at	Transcription error
241	3	enjoined	enjoyed	Transcription error
241	5	statement	sometimes	Transcription error
241	6	deprecating	deprecatingly	Transcription error
242	8-10	stories that were at alternate reality, that took off from a certain point in borrowed continuity, and developed story almost in a	stories that were set in an alternate reality, that took off from a certain point in normal continuity, and developed a story almost in a	Transcription error

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
246	21	Dan	Dann	Spelling error
253	3-5	pursuant to a Xerox, at my request, to him. And the Xerox that said it was on the way; that then this followed.	pursuant to a fax, at my request, to him. And the fax that said it was on the way; that then this followed.	Clarification
253	11-12	I had contacted Stan and asked him if he had it. Because, although it had been published once or twice, I wanted to publish it in Alter Ego and kind of do an analysis of it. So he sent me a Xerox saying it would have to be followed by mail, because it was just too dim to send a good Xerox of it.	I had contacted Stan by and asked him if he had it. Because, although it had been published once or twice, I wanted to publish it in Alter Ego and kind of do an analysis of it. So he sent me a fax saying it would have to be followed by mail, because it was just too dim to send a good Xerox of it.	Clarification
277	8	Meade	Romita	Transcription error
279	17	the seventies	the sixties	Clarification
280	16	Yes, I furnished some plot,	Yes, I furnished some plots,	Transcription error
291	14	He called Sol Brodsky, you know, a	He called in Sol Brodsky, you know, a	Transcription error
293	13	are.	were.	Transcription error
295	5	his work, and Stan didn't feel that he needed	his work, and Stan didn't feel that they needed	Clarification



Roy Thomas

Roy Thomas

Sworn to before me  
this 2<sup>nd</sup> day of December, 2010

Wickie B. Stoenenre  
Notary Public